

Proposed changes to Title 17:

1. With regards to the ‘Observation Period’ in Title 17, the point was brought up that the current Observation Period merely means “being in the presence of” as defined in the recent Supreme Court ruling that allowed observation of the subject in the back of the patrol vehicle as “permissible”. There was much discussion that Title 17 should be amended to more accurately define the Observation Period as “a continuous observation (at the instrument) or as in Webster’s as “to watch or pay attention to” the subject prior to administration of the breath test.

All agreed that there was a great difference between an “observation period” and a “deprivation period” as defined in some jurisdictions, and that we should stick with “Observation Period”.

2. All agreed that Title 17 should be amended to mandate a two-minute separation of the replicate breath tests.
3. All agreed that Title 17 should be amended to mandate that periodic determinations of accuracy be required to be in DUPLICATE as are breath tests with an accuracy of +/- 0.010 (to the third decimal place).
4. There was some discussion that Title 17 should be amended to provide for more stringent requirements for periodic determination of accuracy. For example, under current Federal Regulations, two attempts at the periodic determination of accuracy are allowed for the duplicate results. Currently, it has been reported that periodic determination of accuracy has been witnessed in instrument records up to 6X, which is viewed as the laboratory “hunting” for the correct value. In addition, Title 17 should be amended to require investigation into problems requiring greater than two attempts and rectification of the issue before the instrument can pass its accuracy check in conformance with good laboratory practices (GLP).
5. It was recommended that Title 17 be amended to mandate the additional recording of maintenance records for breath instruments as there are currently NO requirements for this at the present time (Section 1221.4, paragraph 6) in conformance with GLP’s, as well as the mandated periodic determination of accuracy tests.
6. All agreed that NIST-Traceable dry gas standards for instruments should be accepted without validation by DOHS and some even suggested that use of the wet bath simulators should be disallowed.
7. All agreed that the levels of alcohol reference material in Section 1220.3 of Title 17 should be amended to 0.08% (down from 0.10%) and possibly in Section 1221.4, paragraph (2)(A) to be amended to a more practical level of 0.20 grams% (down from 0.30 grams %) to be in line with Section 1220.3.

8. There was much discussion that Title 17 should require complete and accurate breath records with production of error code messages for proper documentation in conformance with GLP's, as some laboratories print " ---" which are undefined and therefore, do not provide a fully accurate representation of instrument status.
9. Title 17 also will require proper annotation of effective amendments with effective dates for all approved changes.
10. With regards to training/certification of officers on breath instruments, Section 1221.4, paragraph 4 of Title 17 should be amended to allow for available/optional remote training of officers with direct proficiency testing administered by the laboratory.
11. There was much discussion that Title 17 should be amended to provide that laboratories should maintain breath alcohol records for 5 years (increased from the current 3 and in line with current DOT Requirements) or 7 years (in line with the statute of limitations) "...henceforth from the inception of the revision of Title 17", as modern record-keeping is not as limited as the arbitrarily-chosen 3 year requirement in 1969.
12. Naturally, Title 17 should be amended everywhere it refers to the "licensed Forensic Alcohol Laboratory", which no longer exists under SB1623.